Supreme Court, U.S.
FILED

(1)

No. _____

01-1690 JAN 18 2002

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

---

PROPHETESS CORA HILL – PETITIONER
(Your Name)

vs.

AMERICAN MEDICAL ASSOCIATION – RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

# PETITION FOR WRIT OF CERTIORARI

PROPHETESS CORA HILL
(Your Name)

C-108 222 OLD FAYETTEVILLE RD
(Address)

CARRBORO, NC 27510
(City, State, Zip Code)

919-968-8988
(Phone Number)

35 PG

## QUESTION(S) PRESENTED

**Question 1:** Should Magistrate Judge, P. Trevor Sharp had the authority to *vacate* the Chief Judge's Affirmed and Reaffirmed Order of Reference?

**Specifications:**

On August 15, 2000, Magistrate Judge, P. Trevor Sharp's Recommendations were to Dismiss, with Prejudice, Plaintiff case. This Recommendation was not affirmed.

**Question 2:** Should Magistrate Judge, P. Trevor Sharp had the authority to *dismantle* Plaintiff's Case?

**Specifications:**

The Magistrate Judge, P. Trevor Sharp created a two-part Cause of Action for one Docketed Cause of Action in obduracy to directives from the Chief Judge.

**Question 3:** Should the United States Court of Appeals for the Fourth Circuit had authority to overlook willful tampering?

**Specifications:**

On July 31, 2001, an Entered Motion for a Judicial Hearing was requested. This was removed for the "True Copy" docketed printout on September 12, 2001.

**Question 4:** Should the Panel, U.S. Circuit Judges, of the United Court of Appeals for the Fourth Circuit had authority to further *dismantle* Plaintiff Appellant's Case?

**Specifications:**

The Judgment Order of December 18, 2001, denying Petition for Rehearing (FRAP 40), affirmed only 01-1974. However, the Judgment Order for 01-1024 is shelved.

## LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of the petition is as follows:

American Hospital Association

U.S. Department of Health and Human Services/OAR

## TABLE OF CONTENTS


| | |
|---|---|
| Questions Presented | i |
| List of Parties | iii |
| Table of Contents | iv |
| Table of Authorities | v |
| Opinions Below | 1 |
| Citation of Reports | 2 |
| Statement for Jurisdiction | 3 |
| Constitutional Provision and Treaties | 5 |
| Statement of the Case | 6 |
| Reasons for Granting the Writ | 9 |
| Conclusion | 10 |
| Appendix | A-1 - A-8 |
| | B-1 - B-12 |


## INDEX TO APPENDICES


| | |
|---|---|
| Appendix A | Denial of Rehearing - A-1 is placed on last page Appeals Court |
| Appendix B | Denial of Default Judgment – B-4 District Court |
| Appendix C | Denial of Interlocutory Decision – A-6 Appeals Court |
| Appendix D | Denial of Reaffirmed Order of Reference – B-3 U.S. District Court of N.C. |
| Appendix E | Recommendations by Magistrate Judge – B-10 |

# TABLE OF AUTHORITIES

CASES PAGE NUMBER

STATUTES AND RULES

Civil Rights Act of 1964

18 U.S.C. § 242

28 U.S.C. §1443

Federal Rule of Evidence Article II 201 (e)

Federal Rule of Evidence 38 5(d)

OTHERS

Civil Rights Act of 1964 42 U.S.C. §2000a. (Excluded Medical Discrimination)

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

## OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix __ to the petition and is
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix __ to the petition and is
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

## JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 11, 2001.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: December 18, 2001, and a copy of the order denying rehearing appears at Appendix A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[ ] For cases from **state courts**:

The date of which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix ___.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

## STATEMENT OF JURISDICTION

The Statement of Jurisdiction of the United States District Court for the Middle District of North Carolina was issued on September 28, 2000 as an Affirmed Order. This was reaffirmed on October 31, 2000, by Chief Judge, N. Carlton Tilley, Jr. to Magistrate P. Trevor Sharp.

The Statutory Provisions conferring jurisdiction on this court to review on a *Writ of certiorari* the decisions in question under Rules and Rule 13.1 of the United States Supreme Court.

## CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution Article III, Section 3

Amendment XIII (Equal Protection Act 1868)

Amendment XIV

AMENDMENT VII

Others

Brown v. Board of Education

Civil Rights Acts – 1964

## STATEMENT OF CASE

***"Hope deferred maketh the heart sick..."*** (Proverb 13:12)

On or about December 21, 2001, Dr. Anthony Fauci, of the National Institutes of Health, confesses on CBS' Eye on America that the mutation associated with HIV/AIDS is overwhelming and has now caused a re-cycling of medications. On February 24, 2000, Plaintiff/s Prophetess Cora Hill; World Deliverance Health Foundation, Inc. and Tree of Life Ministries filed a Civil Rights Violation Complaint against American Medical Association (AMA); American Hospital Association (AHA) and U.S. Department of Health and Human Services/OAR (HHS), the Defendants. This charge is due to deaths from HIV/AIDS and TB against minorities. The Defendants have overwhelmingly "tort" the minority population, specifically; and the public in general, with Consumer's Fraud; Medical Malpractice and Infra-Services with prejudices against minorities with HIV/AIDS and other epidemic diseases. Their actions are with "covert" confusion and captivity that has lead to "overt" destruction without hope. The same medications that are prescribed to the white population destroy the minority population.

An Amended Complaint was filed on March 31, 2000. The Proceedings Hearing were held on July 31, 2000. In attendance were the AHA and HHS. However, the AMA failed to appear. In addition, Magistrate Judge, P. Trevor Sharp, entered the Default on July 31, 2000. As Ordered in the Proceedings on July 31, 2000, Prophetess Hill filed for Default Judgment on August 4, 2000. On August 15, 2000, Magistrate Judge, P. Trevor Sharp recommended motion to dismiss Plaintiff's Amended Complaint with prejudice. On the other hand, a letter from Chief Judge, N. Carlton Tilley, Jr., dated August 22, 2000.

However, on November 20, 2000, Magistrate Judge, P. Trevor Sharp, ordered dismissal of the AHA and HHS by vacating the Chief Judge's Reaffirmed order of October 31, 2000.

A Notice to Appeal was filed on December 18, 2000, with U.S. Court of Appeals, for the Fourth Circuit. An Interlocutory decision by the United States Court of Appeals for the Fourth Circuit was entered on April 2, 2000 for Case 01-1024.

A Set-Aside Entry of Default and Default Judgment for AMA was entered on January 4, 2001.

A Judgment filed contemporaneously, with prejudice was entered on June 12, 2001.

A Notice to Appeal was filed on July 11, 2001 with the U.S. Court of Appeals for the Fourth Circuit for June 12, 2001 dismissal of AMA.

On October 11, 2001, an affirmed decision was entered for cases 01-1024 AND 01-1974 by the U.S. Court of Appeals for the Fourth Circuit.

## REASONS FOR GRANTING THE PETITION

As of September 28, 2000 to December 18, 2001, the jurisdiction decision that is agreed to by all has been an awry conflict in violation, by Magistrate Judge, P. Trevor Sharp, to a Chief Judge's directives and, as Prophetess, my constitutional rights.

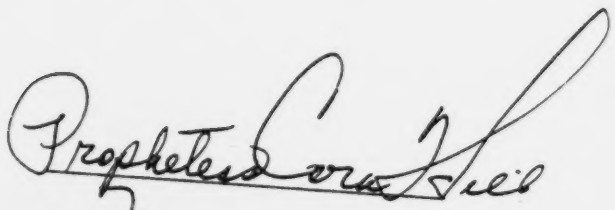
Therefore, I request of the U.S. Supreme Court to exercise its discretion to "Hear" Plaintiff's cause that is denied to uphold the carnage in Medical *coded* Discrimination in violation Civil Rights to Life from HIV/AIDS.

The Experts in the Medical Arena has openly confessed that they have begun to recycle HIV/AIDS medications without "hope." The resourceful medical experts are asking for help!

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: May 6, 2002

# APPENDICES

**Appeals Court – A**

**District Court - B**

APPENDIX A. Denial of Rehearing

Appeals Court

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Filed
December 18, 2001

No. 01-1974
CA-00-182-1

CORA HILL, Prophetess

Plaintiff – Appellant

and

WORLD DELIVERANCE HEALTH FOUNDATION INCORPORATED; TREE OF LIFE MINISTRIES

Plaintiffs

v.

AMERICAN MEDICAL ASSOCIATION, (AMA); AMERICAN HOSPITAL ASSOCIATION, (AHA); U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES; Office of AIDS Research

Defendants – Appellees

---

ORDER

---

Appellant has filed a petition for rehearing.

The Court denies the petition for rehearing.

For the Court,
/s/ Patricia S. Connor
Clerk

NOTICE OF ISSUANCE OF MANDATE

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

December 26, 2001

**MANDATE**

TO: Clerk, District Court/Agency

FROM: Wilma Upshur
Deputy Clerk

RE: 01-1974 Hill v. AMA
CA-00-182-1

HEREWITH IS THE MANDATE OF THE COURT, ISSUED THIS DATE, ON THE JUDGMENT ENTERED BY THE COURT ON 10/11/01.

[ ] Order and Certified Copy of Judgment
[x] Opinion and Certified Copy of Judgment
[ ] Order on Costs
[ ] Order dismissing appeal R42(b) or Local Rule R45
[ ] Other: _____
[ ] The record has been retained for use in case number _____

A copy of the judgment is enclosed to counsel/pro se parties.

cc: John Warren Stone Jr.
Robert Joseph Morris
Brenda Straub McClearn
Cora Hill

JUDGMENT

FILED: March 30, 2001

UNITED STATES COURT OF APPEALS

for the

Fourth Circuit

NO. 01-1024
CA-00-182

CORA Hill, Prophetess

Plaintiff – Appellant

and

WORLD DELIVERANCE HEALTH FOUNDATION, INCORPORATED; TREE OF LIFE MINISTRIES

Plaintiffs

v.

AMERICAN MEDICAL ASSOCIATION; AMERICAN HOSPITAL ASSOCIATION; U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, Office of AIDS Research

Defendants – Appellees

---

Appeal from the United States District Court for the Middle District of North Carolina at Durham

---

In accordance with the written opinion of this Court filed this day, the Court dismisses the appeal.

NOTICE OF ISSUANCE OF MANDATE

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MAY 22, 2001

**MANDATE**

TO: Clerk, District Court/Agency

FROM: Joy Hargett
Deputy Clerk

RE: 01-1024 Hill v. AMA
CA-00-182

HEREWITH IS THE MANDATE OF THIS COURT, ISSUED THIS DATE, ON THE JUDGMENT ENTERED BY THE COURT ON 3/30/01.

[ ] Order and Certified Copy of Judgment
[x] Opinion and Certified Copy of Judgment
[ ] Order on Costs
[ ] Other: _____
[ ] The record has been retained for use in case number _____

A copy of the judgment is enclosed to counsel/pro se parties.

cc: Cora Hill
Brenda Straub McClearn
Robert Joseph Morris
John Warren Stone Jr.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
LEWIS F. POWELL, JR. UNITED STATES COURTHOUSE ANNEX
1100 EAST MAIN STREET, SUITE 501
RICHMOND, VIRGINIA 23219-3517
PATRICIA S. CONNOR, CLERK TELEPHONE (804)916-2700

December 18, 2001

John Warren Stone Jr., Esq.
OFFICE OF THE U.S. ATTORNEY
P. O. Box 1858
Greensboro, NC 27402

Robert Joseph Morris, Esq.
SMITH, ANDERSON, BLOUNT, DORSETT, MITCHELL & JERNIGAN
P. O. Box 2611
Raleigh, NC 27602

Brenda Straub McClearn, Esq.
SHARPLESS & STAVOLA, PA
P. O. Box 22106
Greensboro, NC 27420

Cora Hill
C-108
222 Old Fayetteville Road
Carrboro, NC 27510

Re: 01-1974 Hill v. AMA
CA-00-182-1

Dear Counsel & Appellant:

Enclosed is a copy of an order filed today in this case.

Yours truly,
PATRICIA S. CONNOR
Clerk

By: /s/ Barbara H. Rowe
Deputy Clerk

Enclosure(s)
cc: Joseph P. Creekmore

JUDGMENT

FILED: October 11, 2001

UNITED STATES COURT OF APPEALS

for the

Fourth Circuit

NO. 01-1974
CA-00-182-1

CORA Hill, Prophetess

Plaintiff – Appellant

and

WORLD DELIVERANCE HEALTH FOUNDATION; INCORPORATED; TREE OF LIFE MINISTRIES

Plaintiffs

v.

AMERICAN MEDICAL ASSOCIATION, (AMA); AMERICAN HOSPITAL ASSOCIATION, (AHA); U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, Office of AIDS Research

Defendants – Appellees

---

Appeal from the United States District Court for the Middle District of North Carolina at Durham

In accordance with the written opinion of this Court filed this day, the Court affirms the judgment of the District Court.

/s/ Patricia S. Connor
CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH OF CIRCUIT

---

No. 01-1974

---

CORA HILL, Prophetess,

and Plaintiff – Appellant,

WORLD DELIVERANCE HEALTH FOUNDATION, INCORPORATED; TREE OF LIFE MINISTRIES,

Plaintiffs,

versus

AMERICAN MEDICAL ASSOCIATION (AMA); AMERICAN HOSPITAL ASSOCIATION (AHA); U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, OFFICE OF AIDS Research,

Defendants – Appellees.

---

Appeals from the United States District Court for the Middle District of North Carolina, at Durham. Paul Trevor Sharp, Magistrate Judge. (CA-00-182-1)

---

Submitted: October 4, 2001 Decided: October 11, 2001

---

Before NIEMEYER, LUTTIG, and MICHAEL, Circuit Judges.

---

Affirmed by unpublished per curiam opinion.

Cora Hill, Appellant Pro Se. Brenda Straub McClearn, SHAPLESS & STAVOLA, P.A., Greensboro, North Carolina; Robert Joseph Morris, SMITH, ANDERSON, BLOUNT, DORSETT, MITCHELL & JERNIGAN, Raleigh, North Carolina; John Warren Stone, Jr., Assistant United States Attorney, Greensboro, North Carolina, for Appellees.

---

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Cora Hill appeals the magistrate judge's orders* granting the Defendant's motions to dismiss this action alleging that the Defendant's "torted" the general public by leading it to believe that there was no hope for those afflicted with HIV/AIDS. We have reviewed the record and the magistrate judge's orders and find no reversible error. Accordingly, we affirm on the reasoning of the magistrate judge. Hill v. American Med. Ass'n, No. CA-00-182-1 (M.D.N.C. Nov. 20, 2000 & June 12, 2001). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

*The parties consented to the exercise of jurisdiction by a magistrate judge.

UNITED STATES DISTRICT COURT
Middle District of North Carolina
Post Office Box 2708
Greensboro, North Carolina 27402

Chambers of
N. Carlton Tilley, Jr. August 22, 2000

Dear Counsel and Ms. Hill:

Cora Hill -v- American Medical Association, et al
1:00CV182

The above-entitled case has been randomly selected from the combined dockets of all district judges and administratively assigned to Magistrate Judge P. Trevor Sharp to conduct all pretrial proceedings, including recommendation on dispositive motions. Because of the dramatic increase in the number of criminal cases in recent years, district judges have had to give priority to the significant delay, which can result in cost increases, before it can be tried by a district judge. Congress's enactment of the Civil Justice Reform Act has required the court to give increased attention to addressing costs and delays in resolving civil disputes. The Judicial Conference of the United States has encouraged the designation of magistrate judges to conduct all proceedings in civil cases, both jury and non-jury.

Magistrate Judge Russell A. Eliason and P. Trevor Sharp are experienced officers who for over fifteen years have regularly handled civil cases for discovery through dispositive motions and trial. Trial before a magistrate judge, in addition to an earlier trial date, will also enable the court to give counsel and the parties a special setting. Appeal from a judgment entered by a magistrate judge will be to the Court of Appeals for the Fourth Circuit.

If your client, after consultation with you, consents to the trial jurisdiction of the magistrate judge, please return the enclosed consent form to the Clerk's Office within thirty (30) days. Cases in which consent is not given will nevertheless be first considered by the magistrate judge, who will make rulings or recommendations on

all motions, including dispositive ones. You are required by law to communicate your decision to the Clerk. 28 U.S.C. § 636 (c) (2). Accordingly, the Clerk may contact you if you have not responded within 30 days.

Very truly yours,

N. Carlton Tilley, Jr.
Chief Judge

NCTJR:bb

Enclosure

This the 31st day of October, 2000.

FOR THE COURT

N. Carlton Tilley, Jr.
Chief Judge
United States District Court

October 31st, 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Filed
October 31, 2000

| | | |
|---|---|---|
| PROPHETESS CORA HILL, Plaintiff | ) | |
| | ) | 1:00CV00182 |
| v. | ) | |
| AMERICAN MEDICAL Association, et al., Defendants. | ) | |

REAFFIRMED ORDER

Of Reference to a United States Magistrate Judge

It appearing to the Court that all parties have consented in writing, pursuant to the United States Magistrate Act of 1979 {Title 28 § 636 (c)}, to the exercise by a United States Magistrate Judge of jurisdiction in this case, and for good cause appearing to the Court.

IT IS ORDERED that the above-entitled case is referred to United States Magistrate Judge P. Trevor Sharp to conduct all proceedings including a jury or non-jury trial, order the entry of final judgment, and conduct all post-judgment proceedings.

The Order of Reference of September 28, 2000 is reaffirmed in light of the fact that two written consents were received after entry of the prior order.

Denial of Default Judgment

U.S. District Court of N.C.

ENTERED ON DOCKET
R. 79(a)

June 12, 2001

BY: KIM

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

| | | |
|---|---|---|
| PROPHETESS CORA HILL | ) | |
| | ) | |
| Plaintiff, | ) | 1:00CV00182 |
| | ) | |
| v. | ) | |
| | ) | |
| AMERICAN MEDICAL ASSOCIATION, AMERICAN HOSPITAL ASSOCIATION and U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES | ) | |
| | ) | |
| Defendants | ) | |

J-U-D-G-M-E-N-T

For the reasons set forth in the Order filed contemporaneously with this Judgment **IT IS HEREBY ORDEED AND ADJUDGED** that this action be, and the same hereby is, dismissed with prejudice.

P. Trevor Sharp, United States Magistrate Judge

June 12, 2001

ENTERED ON DOCKET
R: 79(a)

JUNE 12, 2001

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

BY: KLM

| | | |
|---|---|---|
| PROPHETESS CORA HILL,<br><br>Plaintiff,<br><br>AMERICAN MEDICAL ASSOCIATION, AMERICAN HOSPITAL ASSOCIATION and U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES,<br><br>Defendants, | ) | 1:00CV00182<br><br>FILED<br>JUNE 12, 2001 |

MEMORANDUM ORDER

**SHARP, Magistrate Judge**

This matter comes before the Court on the January 26, 2001 motion to dismiss [Pleading no.44] filed by Defendant American Medical Association ("AMA"). Plaintiff Prophetess Cora Hill[1] opposes the motion to dismiss.

[1] Cora Hill is the sole remaining Plaintiff. While the original complaint identified the World Deliverance Health Foundation, Inc. and the Tree of Life Ministries as additional Plaintiffs, Cora Hill, as representative for those entities, gave notice of voluntary Dismissal of those parties in her "Motion to Withdraw," filed April 14, 2000. [Pleading no.17]

In her Amended Complaint [Pleading no.10], Plaintiff Hill alleges that the party Defendants have "tort" the public in general and the minority population specifically into believing there is little or no hope with respect HIV/AIDS. She says that the sale of medications are causing thousands to perish. Ms. Hill alleges that Defendants have caused consumer fraud and medical malpractice against minorities with HIV/AIDS, and that the same medications which have "cured" the white population are destroying minorities.

On review of the Amended Complaint, the Court concludes that the motion to Dismiss filed by Defendant AMA is well taken. The Amended Complaint fails to identify any basis for the exercise of subject matter jurisdiction. The allegation that Defendants have "tort" the public does not raise a federal question, and there is no allegation that could support a finding of diversity jurisdiction. Moreover, Plaintiff lacks standing to sue. She has shown no "invasion of a legally protected interest" that is "concrete and particularized." *Koenick v. Felton*, 190 F.3d 259, 263 (4th Cir. 1999), *cert. Denied*, 528 U.S. 1118 (2000), citing *Lujan v. Defenders*

*of Wildlife*, 504 U.S. 55,560 (1992). It is well established that an interest shared with the public at large is not sufficient to create standing. *Id.* Citing *Lujan*, 504 U.S. at 573-76. It I a general rule that a litigant may not assert the rights of others, as Plaintiff Hill has attempted here. *See Mackey v. Nationwide Ins. Companies*, 724 F2d 419, 421-22 (4th Cir.1984).

Further, the Amended Complaint is subject to Rule 12(b) (6) dismissal for failure to state a legal claim. Even construing the complaint under the liberal standard afforded to *Pro se* plaintiffs, no cognizable claim arises from Plaintiff's generalized assertion that Defendants have "tort" the public in general and the minority population through the continued sale of HIV/AIDS medications and treatments. The asserted claim does not give adequate notice of any particular legal claim.

Finally, it is further appears that Plaintiff has not gained personal jurisdiction over the Defendant since her affidavit of service [Pleading no.3] shows that she failed to direct her Certified mail, containing the complaint and summons, to an officer, director,

managing agent, or registered agent of Defendant. See Fed. R. Civ. P. 4; N.C.R. CIV.P.4(J)(6).

Accordingly, **IT IS ORDERED** that the motion to dismiss [Pleading no.44] filed by Defendant AMA is **GRANTED**. This action will be dismissed with prejudice by a separate judgment.

P. Trevor Sharp, United States Magistrate Judge

June 12, 2001

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

| | | |
|---|---|---|
| PROPHETESS CORA HILL, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | 1:00CV00182 |
| | ) | |
| AMERICAN MEDICAL ASSOCIATION, AMERICAN HOSPITAL ASSOCIATION, and U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, | ) | |
| | ) | |
| Defendants. | ) | |

O-R-D-E-R

For reasons set forth in the Recommendation filed August 15, 2000,

**IT IS HEREBY ORDERED** that the motions to dismiss filed by Defendants American Hospital Association and U.S. Department of Health and Human Services [Pleadings no. 5, 14 and 21] be **GRANTED**.

United States Magistrate Judge

November 20, 2000

Entered On Docket
R.79 (a)
Aug. 15, 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
BY: KLM

| | | |
|---|---|---|
| PROPHETESS CORA HILL,<br><br>Plaintiff,<br><br>v.<br><br>AMERICAN MEDICAL ASSOCIATION, AMERICAN HOSPITAL ASSOCIATION and U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES,<br><br>Defendants. | ) | 1:00CV00182<br><br>FILED: Aug. 15, 2000 |

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This matter came before the Court on July 31, 2000 for a hearing on the motions to dismiss [Pleading nos. 5, 14 and 21] filed by Defendants American Hospital Association ("AHA") and the United States Department of Health and Human Services ("HHS"). Defendant American Medical Association has not responded to the complaint. Plaintiff Prophetess Cora Hill[1] opposes the motion to dismiss.

[1] Cora Hill is the sole remaining plaintiff. While the original complaint identified the World Deliverance Health Foundation, Inc. and the Tree of Life Ministries as additional Plaintiffs, Cora Hill, as representative for these entities, gave notice of voluntary dismissal of the claims of those parties in her "Motion to Withdraw," filed April 14, 2000.[Pleading n. 17}

In her Amended Complaint [Pleasing no. 10], Plaintiff Hill alleges that the party Defendants have "tort" the public in general and the minority population specifically in believing there is little or no hope with respect to HIV/AIDS.

She says that the sale of medications are causing thousands to perish. Hill alleges that Defendant have caused consumer fraud and medical malpractice against minorities with HIV/AIDS, and that the same medications which have 'cured' the white population are destroying minorities.

On review of the pleading, the court concludes that the motions to dismiss filed by Defendants AHA and HHS are well taken. The Amended Complaint fails to identify any basis for the exercise of subject matter jurisdiction. The allegation that Defendants have "tort" the public does not raise a federal question, and there is no allegation that could support a finding of diversity jurisdiction. Moreover, Plaintiff lacks standing to sue. She has shown no "invasion of a legally protected interest" that is "concrete and particularized." *Koenick v. Felt, 190f.3d 259, 263 (4th Cir. 1990), cert. Denied, ___ U.S. ___, 120 S. Ct.938 (2000)* citing *Lujan v. Defenders of wildlife*, 504 U.S. 555,560 (1992). It is well established that an interest shared with the public at large is not sufficient to created standing. *Id.* Citing *Lujan*, 504 U.S. at 573-76. It is a general rule that a ligitant may not assert the rights of others as Plaintiff Hill has attempted here. *See Mackey v. Nationwide Ins. Companies*, 724 F.2d 419, 421-22 (4th Cir. 1984).

Further, the Amended Complaint is subject to Rule 12 (b)(6) dismissal for failure to state a legal claim. Even construing the complaint under the liberal standard afforded to pro se plaintiffs, no cognizable claim arises from Plaintiff's generalized assertion that Defendants have "tort" the public in general and the minority population through the continued sale of HIV/AIDS medications and treatments. The asserted claim does not give adequate notice of any particular legal claim.

Finally, as to the federal Defendant, HHS, Plaintiff has not shown that she has filed an administrative claim, as required by 28 U.S.C. § 2675, and therefore cannot escape the federal defendant's defense of sovereign immunity. *See generally* Honda v. Clark, 386 U.S. 484,501 (1967).

Accordingly, **IT IS RECOMMENDED** that the motions to dismiss filed by Defendants AHA and HHS be granted and that this action be dismissed with prejudice.

P. Trevor Sharp, U.S. Magistrate Judge

August 15, 2000

(2)

No. 01-1690

Supreme Court, U.S.
FILED
JUN 19 2002

In The
# Supreme Court of the United States

PROPHETESS CORA HILL,
*Petitioner,*

v.

AMERICAN MEDICAL ASSOCIATION;
AMERICAN HOSPITAL ASSOCIATION;
U.S. DEPARTMENT OF HEALTH
AND HUMAN SERVICES,
*Respondents.*

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

## BRIEF IN OPPOSITION OF RESPONDENT AMERICAN HOSPITAL ASSOCIATION

James K. Dorsett, III
*(Counsel of Record)*
Robert J. Morris
*(Application for Admission Pending)*
SMITH, ANDERSON, BLOUNT, DORSETT,
MITCHELL & JERNIGAN, L.L.P.
Post Office Box 2611
Raleigh, North Carolina 27602
(919) 821-1220

*Counsel for Respondent*
*American Hospital Association*

THE LEX GROUP • 1108 East Main Street • Suite 1400 • Richmond, VA 23219
(804) 644-4419 • (800) 856-4419 • Fax: (804) 644-3660 • www.thelexgroup.com

14pgs

## QUESTIONS PRESENTED

**I. Whether the U.S. Court of Appeals for the Fourth Circuit correctly held that the U.S. Magistrate Judge had authority under 28 U.S.C. § 636(c) to enter the November 21, 2000 order granting the American Hospital Association's motion to dismiss and the June 12, 2001 judgment dismissing the action with prejudice?**

**II. Whether the U.S. Court of Appeals for the Fourth Circuit correctly held that the District Court's dismissal of the Amended Complaint was proper?**

## LIST OF PARTIES AND RULE 29.6 STATEMENT

All parties to the proceeding in the U.S. Court of Appeals for the Fourth Circuit are listed in the caption of the case on the cover page of this brief. World Deliverance Health Foundation and Tree of Life Ministries were originally named as additional plaintiffs in the District Court. Their claims were voluntarily dismissed on April 14, 2000, and they were not parties to the proceeding in the Fourth Circuit.

Respondent American Hospital Association ("AHA") is organized as a not-for-profit corporation under the laws of the State of Illinois and is governed by a board of trustees. It is a tax-exempt trade association with a voluntary membership of approximately 4,500 institutional and 40,000 personal members. None of the AHA's members has a direct financial interest in the outcome of this case.

## TABLE OF CONTENTS


Page

QUESTIONS PRESENTED ..... i

LIST OF PARTIES AND RULE 29.6 STATEMENT ..... ii

TABLE OF CONTENTS ..... iii

TABLE OF AUTHORITIES ..... iv

COUNTERSTATEMENT OF THE CASE ..... 1

ARGUMENT ..... 4

I. The Magistrate Judge Had Authority To Grant The AHA's Motion To Dismiss The Amended Complaint And To Enter Judgment Dismissing The Action With Prejudice ..... 5

II. The District Court Correctly Granted The AHA's Motion To Dismiss The Amended Complaint ..... 5

III. The Fourth Circuit Correctly Affirmed The Judgment Of The District Court ..... 7

CONCLUSION ..... 8

## TABLE OF AUTHORITIES


**Page**

**Cases:**

*Koenick v. Felton*,
190 F.3d 259 (4th Cir. 1999), *cert. denied*,
528 U.S. 1118 (2000) ..... 6

*Lujan v. Defenders of Wildlife*,
504 U.S. 555 (1992) ..... 6

*Mackey v. Nationwide Ins. Cos.*,
724 F.2d 419 (4th Cir. 1984) ..... 6

*McNutt v. General Motors Acceptance Corp.*,
298 U.S. 178 (1936) ..... 5-6

*Sligh v. Doe*,
596 F.2d 1169 (4th Cir. 1979) ..... 5

**Constitutional Provisions:**

U.S. Constitution, Art. III, § 2 ..... 6

**Statutes:**

28 U.S.C. § 636(c) ..... i, 3, 5, 7

28 U.S.C. § 1331 ..... 6

28 U.S.C. § 1332 ..... 6

**Rules:**

Fed. R. Civ. P. 12(b)(1) ..... 6

Fed. R. Civ. P. 12(b)(6) ..... 6, 7

## COUNTERSTATEMENT OF THE CASE

On February 24, 2000, petitioner Prophetess Cora Hill (together with World Deliverance Health Foundation and Tree of Life Ministries) filed a *pro se* Complaint in the United States District Court for the Middle District of North Carolina against the American Medical Association ("AMA"), American Hospital Association ("AHA") and U.S. Department of Health and Human Services. The one-page Complaint alleged:

> The Parties hereto have overwhelmly [sic] "TORTED" the public in general and the minority population. Specifically, that there is "Little" to "No Hope" from this dreaded virus called HIV/AIDS. But, yet the Medications and other treatments are causing thousands to perish. For this reason, they have allowed Consumer's Fraud, Medical Malpractice's [sic] and Infra-Services [sic] with prejudices against minorities with HIV/AIDS and other epidemic disease with "covert" confusion and captivity that has lead to "Overt" destruction.

The Complaint then listed what appeared to be titles from a number of newspaper articles relating to the HIV/AIDS virus. On March 20, 2000, the AHA filed a motion to dismiss for lack of subject matter jurisdiction, lack of standing to sue, and failure to state a claim.

On March 31, 2000, Ms. Hill, World Deliverance Health Foundation and Tree of Life Ministries filed an Amended Complaint, which, similar to the original Complaint, stated in part:

> The parties hereto have overwhelmly [sic] "Tort" the public in general and the minority population specifically in believing that there is "Little" to "No Hope" from this dreaded virus called HIV/AIDS. But, yet the continued sale of medications and other treatments are causing thousands to perish. For this reason they have blatantly caused Consumer's Fraud, Medical Malpractice and Infra-Services [sic] with prejudices against minorities with HIV/AIDS and other epidemic diseases with "covert" confusion and captivity that has led to "overt" destruction. The same medications used to "cure" the white population are destroying the minority population. We ask why?

Attached to the Amended Complaint were a number of newspaper articles concerning the HIV/AIDS virus. The AHA filed a motion to dismiss the Amended Complaint on April 12, 2000 on the same grounds cited in its initial motion to dismiss. The claims of World Deliverance Health Foundation and Tree of Life Ministries were voluntarily dismissed on April 14, 2000.

On April 20 2000, Ms. Hill filed a motion for entry of a default judgment against the AMA due to its failure to respond to the Complaint. The U.S. Department of Health and Human Services filed a motion to dismiss the Amended Complaint on April 27, 2000.

On July 31, 2000, a hearing was held by a U.S. Magistrate Judge on the motions to dismiss and on Ms. Hill's motion for entry of a default judgment against the AMA. On August 4, 2000, a default judgment was entered against the AMA. On August 15, 2000, the Magistrate Judge recommended that the motions to dismiss be granted.

On August 17, 2000, the AMA filed a motion to set aside the default judgment entered against it.

On September 28, 2000, an Order of Reference was entered by the District Court referring the case to the Magistrate Judge pursuant to 28 U.S.C. § 636(c) for all proceedings. On October 31, 2000, the District Court entered a Reaffirmed Order of Reference in light of the fact that two written consents to the referral of the case to the U.S. Magistrate Judge had been received after the entry of the earlier Order of Reference on September 28, 2000. The Magistrate Judge entered an order granting the motions to dismiss the claims against the AHA and the U.S. Department of Health and Human Services on November 21, 2000.

On January 8, 2001, Ms. Hill appealed the November 21, 2000 dismissal order to the United States Court of Appeals for the Fourth Circuit. However, as

the November 21, 2000 Order of Dismissal did not resolve Ms. Hill's claim against the AMA, the appeal was dismissed due to lack of jurisdiction on March 30, 2001.

After the default judgment against the AMA was set aside and a motion to dismiss the claim against the AMA was granted, the Magistrate Judge entered a final judgment dismissing the action with prejudice on June 12, 2001.

Ms. Hill appealed the judgment to the Fourth Circuit on August 8, 2001. The Fourth Circuit affirmed the judgment on October 11, 2001. A petition for rehearing was denied by the Fourth Circuit on December 18, 2001.

Petitioner filed a petition for a writ of certiorari in this Court on January 18, 2002.

## ARGUMENT

Ms. Hill offers the Court no basis upon which to grant the petition for a writ of certiorari. Ms. Hill does not argue that the Fourth Circuit's decision in this case is in conflict with a decision of another federal or state court, nor does she contend that this case involves an important question of federal law or otherwise warrants the Court's exercise of its discretionary jurisdiction. Accordingly, the AHA will only briefly discuss why the Fourth Circuit correctly upheld the judgment of the District Court.

## I. The Magistrate Judge Had Authority To Grant The AHA's Motion To Dismiss The Amended Complaint And To Enter Judgment Dismissing The Action With Prejudice.

All parties consented to the referral of the case to a Magistrate Judge for all proceedings under 28 U.S.C. § 636(c). On October 31, 2000, Chief U.S. District Judge Tilley entered a Reaffirmed Order of Reference in light of the fact that two written consents had been received after the entry of the prior Order of Reference. Accordingly, at the time of the entry of the order granting the AHA's motion to dismiss on November 21, 2000, the Magistrate Judge had full authority under 28 U.S.C. § 636(c) to conduct all proceedings in this case, including the entry of an order of dismissal. The U.S. Magistrate Judge also had full authority under 28 U.S.C. § 636(c) to enter the June 12, 2001 judgment dismissing this action with prejudice.

## II. The District Court Correctly Granted The AHA's Motion To Dismiss The Amended Complaint.

The AHA's motion to dismiss the Amended Complaint was properly granted for a number of reasons.

First, as the District Court recognized, the Amended Complaint did not identify any basis for the exercise of subject matter jurisdiction. It is "hornbook law" that a plaintiff seeking relief in a federal court has the burden of alleging and proving the facts conferring subject matter jurisdiction upon the court. *Sligh v. Doe*, 596 F.2d 1169, 1170 (4th Cir. 1979) (*citing McNutt v.*

*General Motors Acceptance Corp.*, 298 U.S. 178 (1936)). Ms. Hill's allegation that the defendants had "TORT" the public did not raise a federal question under 28 U.S.C. § 1331, and Ms. Hill made no allegation that would support a finding of diversity jurisdiction under 28 U.S.C. § 1332. Ms. Hill's failure to allege a foundation for the District Court to exercise subject matter jurisdiction warranted dismissal under Fed. R. Civ. P. 12(b)(1).

Second, the District Court correctly concluded that Ms. Hill lacked the requisite standing to sue under Article III, § 2 of the U.S. Constitution. While it is very difficult to discern from the Amended Complaint the exact nature of Ms. Hill's grievance, she apparently purported to sue on behalf of "the public in general and the minority population." There is nothing in the Amended Complaint, however, which showed "'an invasion of a legally protected interest' that is 'concrete and particularized.'" *Koenick v. Felton*, 190 F.3d 259, 263 (4th Cir. 1999), *cert. denied*, 528 U.S. 1118 (2000) (*quoting Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560) (1992)). An interest shared with the public at large is not sufficient to create standing, *id.* (*citing Lujan*, 504 U.S. at 573-76), and it is a general rule that "a litigant is not permitted to assert the legal rights of others." *Mackey v. Nationwide Ins. Cos.*, 724 F.2d 419, 421-22 (4th Cir. 1984). Ms. Hill's Amended Complaint contained no allegation of direct injury to her. Accordingly, due to Ms. Hill's failure to allege facts showing that she had proper standing to sue, Ms. Hill's claims against the AHA were properly dismissed pursuant to Fed. R. Civ. P. 12(b)(1) and (6).

Third, the District Court correctly concluded that the Amended Complaint failed to state a claim against the AHA upon which relief could be granted. Even when read with the liberality afforded to *pro se* pleadings, the Amended Complaint did not set forth any cognizable claim for relief against the AHA. Alleging only that defendants "have overwhelmly [sic] 'TORT' the public in general and the minority population" in connection with the HIV/AIDS virus and treatments therefor, the Amended Complaint did not give the AHA notice of any particular legal claim. Thus, Ms. Hill's claims against the AHA were properly dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

## III. The Fourth Circuit Correctly Affirmed The Judgment Of The District Court.

The Magistrate Judge had authority under 28 U.S.C. § 636(c) to enter an order granting the AHA's motion to dismiss and to enter a final judgment dismissing the action with prejudice. Also, the District Court properly dismissed the Amended Complaint for lack of subject matter jurisdiction, for lack of standing to sue, and for failure to state a claim. Accordingly, the Fourth Circuit correctly affirmed the judgment of the District Court.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully Submitted,

James K. Dorsett, III
*(Counsel of Record)*
Robert J. Morris
*(Application for Admission Pending)*
SMITH, ANDERSON, BLOUNT,
DORSETT, MITCHELL &
JERNIGAN, L.L.P.
Post Office Box 2611
Raleigh, North Carolina 27602
(919) 821-1220

*Counsel for Respondent*
*American Hospital Association*